

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: SB 2622

INTRODUCER: Senator Dockery

SUBJECT: Anti-Murder Act

DATE: April 18, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Luczynski	Maclure	JU	Favorable
2.			CJ	
3.			JA	
4.			WM	
5.				
6.				

I. Summary:

This bill creates a class of persons who are on probation or community control known as a *violent felony offender of special concern*. Violent felony offenders of special concern are defined as persons who commit certain violent felonies and other qualifying conditions. Such an offender who has been arrested for an alleged violation of probation or community control may not be granted bail or any form of pretrial release before the resolution of the hearing on the violation of probation or community control unless the charge or arrest is based solely on the offender's failure to pay costs, fines, or restitution. The court must determine if the offender violated any nonmonetary term of probation or community control, and if he or she has violated, whether to revoke probation or community control. If the court finds that the offender has violated, the court must determine whether the offender is a danger to the community based on certain factors. Finally, if the court finds that the offender poses a danger to the community, the court must revoke probation or community control and sentence the offender up to the statutory maximum.

The Criminal Punishment Code provides a mathematical formula that determines the minimum sentence that a criminal offender must serve. Under current law, a violator of probation or community control is assessed an additional 12 points for a felony violation, or 6 points for any other violation. This bill increases those points for violent felony offenders of special concern by 50 percent.

On March 21, 2006, the Criminal Justice Estimating Conference determined that the bill would increase the inmate population by 1,336 inmates by the end of FY 2010-11 (See Government Sector Impact in the Economic Impact and Fiscal Note section below for further information on the fiscal impact.)

This bill substantially amends sections 921.0024 and 948.06, Florida Statutes. This bill creates section 903.0351, Florida Statutes. This bill reenacts the following sections of the Florida Statutes: 948.012(2)(b), 948.10(9), and 958.14.

II. Present Situation:

Probation is a form of community supervision requiring specified contacts with parole and probation officers, standard terms and conditions in statute, and any specific terms and conditions required by the sentencing court.¹ Community control is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.²

The statutory terms and conditions required of persons on probation or community control, as provided by s. 948.03, F.S., may include that the offender must:

- Report to the probation and parole supervisors as directed.
- Permit such supervisors to visit him or her at his or her home or elsewhere.
- Work faithfully at suitable employment insofar as may be possible.
- Remain within a specified place.
- Make reparation or restitution.
- Make payment of the debt due and owing to a county or municipal detention facility for medical care, treatment, hospitalization, or transportation received by the felony probationer while in that detention facility.
- Support his or her legal dependents to the best of his or her ability.
- Pay any monies owed to the crime victims compensation trust fund.
- Pay the application fee and costs of the public defender.
- Not associate with persons engaged in criminal activities.
- Submit to random testing to determine the presence or use of alcohol or controlled substances.
- Not possess, carry, or own any firearm unless authorized by the court and consented to by the probation officer.
- Not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician.
- Not knowingly visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.
- Submit to the drawing of blood or other biological specimens.
- The court may add other terms and conditions as it considers proper.

Section 948.06, F.S., provides procedures regarding violation of the terms and conditions required of a person on probation or community control. A police officer or a probation officer

¹ Section 948.001(5), F.S.

² Section 948.001(2), F.S.

may make a warrantless arrest of a person on probation or community control when he or she has reasonable grounds to believe that such person violated his or her probation or community control in any material respect.³ At the first hearing on the violation, the court advises the offender of the charge. If the offender admits the truth of the charge, the court may immediately revoke, modify, or continue the probation or community control or place the probationer into a community control program.

If the offender denies having violated the terms of the probation or community control, the court may commit him or her or release him or her with or without bail to await further hearing, or it may dismiss the charge of probation or community control violation. Unless dismissed, the court must, as soon as may be practicable, conduct a hearing and determine whether the offender has violated. If the court finds that the offender has violated, the court may immediately revoke, modify, or continue the probation or community control or place the probationer into a community control program.

If probation or community control is revoked, the court must adjudicate the probationer or offender guilty of the offense charged and proven or admitted, unless he or she has previously been adjudicated guilty. The court may then impose any sentence that it might have originally imposed before placing the probationer on probation or the offender into community control.

The Criminal Punishment Code, ss. 921.002 through 921.0027, F.S., is applicable to all felony offenses committed on or after October 1, 1998.⁴ The code provides a mathematical formula that determines the minimum sentence that a court may impose upon an offender. The minimum sentence is calculated based upon the total number of points assessed against the offender. If the total points exceed 44, the court must subtract 28 points and multiply by 75 percent. The resulting number is the minimum number of months in state prison that the offender must serve.⁵ However, the court may find that one or more of the mitigating circumstances at s. 921.0026, F.S., warrants a downward departure, except for capital felonies. Where a downward departure is granted, the court may sentence the offender to less than the minimum sentence.

If an offender is resentenced after being found guilty of violating the terms of his or her probation or community control, the total points are re-calculated, adding 12 points for a violation resulting from committing a new felony offense or 6 points for any violation other than a new felony offense.⁶ The effect of the additional points may compel the sentencing court to impose a new state prison sentence, unless the court finds grounds for a downward departure.

III. Effect of Proposed Changes:

This bill creates the “Anti-Murder Act.” This bill creates s. 903.0351, in chapter 903, F.S., the chapter concerning bail, that provides that a violent felony offender of special concern arrested for an alleged violation of probation or community control may not be granted bail or any form of pretrial release prior to the resolution of the probation or community control violation hearing unless the violation is based solely on a failure to pay costs, fines, or restitution.

³ Section 948.06(1)(a), F.S.

⁴ Section 921.002, F.S.

⁵ Section 921.0024(2), F.S.

⁶ Section 921.0024(1)(b), F.S.

Section 903.0351 effectively provides a summary of the provisions of the Anti-Murder Act. The details of the Anti-Murder Act are provided for by amendment to s. 948.06, F.S., in the chapter on probation and community control and by amendment to s. 921.0024, F.S., in the Criminal Punishment Code.

The amendments to s. 948.06(4), F.S., provide that if any violation of probation or community control other than a failure to pay costs, fines, or restitution is alleged to have been committed by a violent felony offender of special concern, the offender may not be granted bail or any other form of pretrial release but must be brought before the court that granted the probation or community control. This bill amends s. 948.06, F.S., regarding violation of probation, creating a new subsection (8) regarding violent felony offenders of special concern. The bill defines *violent felony offenders of special concern* as a person who is on probation or community control:

- For the commission of a qualifying offense committed on or after July 1, 2006.
- For any offense committed on or after July 1, 2006, and who has previously been convicted of or had adjudication withheld for a qualifying offense.
- For any offense committed on or after July 1, 2006, and who is found to have violated that probation or community control by committing a qualifying offense.
- And has been previously found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b), F.S., and has committed a qualifying offense on or after July 1, 2006.
- And has been previously found by a court to be a three-time violent felony offender as defined in s. 775.084(1)(c), F.S., and has committed a qualifying offense on or after July 1, 2006.
- And has been previously found by a court to be a sexual predator under s. 775.21, F.S., and has committed a qualifying offense on or after July 1, 2006.

This bill provides that commission of any listed offense on or after July 1, 2006, is a qualifying offense. The listed offenses are:

- Kidnapping or attempted kidnapping under s. 787.01, false imprisonment of a child under the age of 13 under s. 787.02(3), F.S., or luring or enticing a child under s. 787.025, F.S.
- Murder or attempted murder under s. 782.04, F.S., attempted felony murder under s. 782.051, F.S., or manslaughter under s. 782.07, F.S.
- Aggravated battery or attempted aggravated battery under s. 784.045, F.S.
- Sexual battery or attempted sexual battery under s. 794.011(2), (3), or (4), F.S.
- Lewd or lascivious battery or attempted lewd or lascivious batter under s. 800.04(4), F.S. or lewd or lascivious molestation under s. 800.04(5)(b).
- Robbery or attempted robbery under s. 812.13, F.S., carjacking under s. 812.133, F.S., or home invasion robbery under s. 812.135, F.S.
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person under s. 825.1025, F.S.
- Sexual performance of a child or attempted sexual performance of a child under s. 827.071, F.S.

- Computer pornography under s. 847.0135(2) or (3), F.S., transmission of child pornography under s. 847.0137, F.S., or selling or buying of minors under s. 847.0145, F.S.
- Poisoning food or water under s. 859.01, F.S.
- Abuse of a dead human body under s. 872.06, F.S.
- Burglary or attempted burglary that is a first-degree or second-degree felony, or any attempted burglary offense, under s. 810.02(2) or (3), F.S.
- Arson or attempted arson under s. 806.01(1), F.S.
- Aggravated assault under s. 784.021, F.S.
- Aggravated stalking under s. 784.048(3), (4), (5), or (7), F.S.
- Airplane piracy under s. 860.16, F.S.
- Unlawful throwing, placing, or discharging of a destructive device or bomb under s. 790.161(2), (3), or (4), F.S.
- Treason under s. 876.32, F.S.
- An offense in another jurisdiction that would meet the definitions of these offenses if committed in Florida.

This bill provides that, as to any person who is a violent felony offender of special concern, who violates any condition of probation other than a failure to pay costs, fines, or restitution:

- No bail is allowed.
- The court may not dismiss the violation unless the court conducts a recorded hearing at which the state and the offender are represented.

If the court finds that a violent felony offender of special concern has violated any nonmonetary terms of probation or community control, the court must decide whether to revoke the probation or community control. If the court determines by a preponderance of the evidence that a violent felony offender of special concern poses a danger to the community, the court shall revoke probation or community control and shall sentence the offender up to the statutory maximum under the Criminal Punishment Code, s. 921.0024, F.S. The court is allowed to consider a number of factors in determining the danger to the community posed by the offender's release. The court must enter a written order in support of its finding in determining whether the offender poses a danger to the community.

This bill amends s. 921.0024, F.S., to modify the formula for determining the Total Sentence Points under the Criminal Punishment Code. A violent felony offender of special concern violator is assessed 9 points for a violation that does not involve a new felony conviction (as opposed to the 6 points assessed under current law), and is assessed 18 points for a violation that involves a new felony conviction (as opposed to the 12 points assessed under current law). These additional points will have the effect of lengthening the minimum sentence required by the Criminal Punishment Code.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill could have a significant fiscal impact on counties but would appear to be exempt from the provisions of Article VII, Section 18 (a) of the state constitution because it amends a criminal law.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The language of s. 948.06(8)(b)1.a., “For the commission of a qualifying offense committed on or after July 1, 2006,” may be subject to a void for vagueness challenge, in violation of article I, section 9 of the Florida Constitution.⁷ Because the term “commission” is not defined, it may not be clear whether a person who is on probation or community control qualifies as a violent felony offender of special concern if he or she has a conviction of guilt, a guilty plea, or a plea of nolo contendere, whether or not adjudication was withheld, for a qualifying offense committed after July 1, 2006. The Legislature may wish to define the term or replace it with more specific language concerning what satisfies the conditions of this provision of the bill.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:**State Government**

On March 21, 2006, the Criminal Justice Estimating Conference determined that the bill would result in:

- 32 additional inmates for FY 2006-07;
- 251 additional inmates for FY 2007-08;

⁷ See *Sult v. State*, 906 So. 2d 1013, 1020 (Fla. 2005) (stating that a statute or ordinance is void for vagueness when, because of its imprecision, it fails to give adequate notice of what conduct is prohibited).

- 632 additional inmates for FY 2008-09;
- 1,015 additional inmates for FY 2009-10; and
- 1,336 additional inmates for FY 2010-11.

The 32 additional inmates in FY 2006-07 would result in additional costs of \$305,184 for operations. Construction costs are estimated by the conference at \$40,273 per bed. The construction cost to provide for the expected additional inmates through FY 2007-08 are approximately \$10.1 million.

Local Government

The impact on local government is indeterminate. The bill requires a violent felony offender of special concern to be detained without bail pending the final hearing on the violation. As such, the violator will be held in a county jail at county expense. The impact could be significant, but may not be because the offenders who meet the definition of a violent felony offender of special concern are more serious, violent offenders who may have a high likelihood of not receiving bail under existing law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
